

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

A10 NETWORKS, INC.,
a California corporation,

Plaintiff,

v.

BROCADE COMMUNICATIONS
SYSTEMS, INC., a Delaware corporation; F5
NETWORKS, INC., a Washington corporation,

Defendants.

Case No.: 5:11-CV-05493-LHK

ORDER GRANTING MOTIONS TO
FILE UNDER SEAL

Before the Court are three administrative motions to file under seal portions of the briefs and exhibits related to Brocade's pending motion to dismiss. ECF Nos. 62 ("Brocade's first sealing motion"), 68 ("A10's sealing motion"), 70 ("Brocade's second sealing motion"). Pursuant to Civil Local Rule 79-5(a), an order authorizing the sealing of a particular document or portion of a particular document "may issue only upon a request that establishes that the document, or portions thereof, is privileged or protectable as trade secret or otherwise entitled to protection under the law." The Court rules on each of these motions in turn.

A. Brocade's First Sealing Motion

Brocade's first sealing motion seeks leave, pursuant to Local Rules 7-11 and 79-5(b), to file under seal the following: the entirety of Exhibit B and portions of Exhibit C to the Declaration of

Teri H.P. Nguyen in support of Brocade's first sealing motion. ECF No. 62-1. Exhibit B is a January 31, 2011 Patent Assignment Agreement ("PAA") between A10 Networks, Inc.-Taiwan and the Industrial Technology Research Institute. *Id.* ¶ 2. Exhibit C is Brocade's memorandum of points and authorities in support of its motion to dismiss A10's first amended complaint. *Id.* Exhibit B was produced under the protective order and designated by A10 as "Highly Confidential - Outside Counsel's Eyes Only." *Id.* ¶ 3. The portions of Exhibit C Brocade seeks to file under seal reference Exhibit B. *Id.*

On February 3, 2012, A10 filed the Declaration of Mark A. Flagel in support of Brocade's first sealing motion pursuant to Local Rule 79-5(d) ("Flagel Declaration I"). ECF No. 65. A10 contends that Exhibit B contains "confidential, sensitive and proprietary information that could be used by A10's competitors and others to the detriment of A10, should this document be released to the general public." *Id.* ¶ 2. A10 further argues that proposed redacted portions of Exhibit C refer to and disclose the "confidential, sensitive and proprietary information" contained in Exhibit B.

Exhibit B, the PAA, contains confidential terms agreed to by A10 Networks, Inc.-Taiwan and the Industrial Technology Research Institute. The Court has reviewed Exhibit B and concludes that it is sealable in its entirety because it contains confidential, sensitive and proprietary information that could harm A10 if publicly released. The Court has also reviewed the proposed redactions to Exhibit C and finds that the proposed redactions are narrowly tailored and sealable because they quote from or otherwise reference information in Exhibit B. Accordingly, the Court GRANTS Brocade's First Sealing Motion. Brocade shall file Exhibits B and C under seal by *lypg* 6. 2012. Brocade shall redact, as proposed, Exhibit C and publicly e-file the redacted version of Exhibit C by *lypg*"6, 2012.

B. A10's Sealing Motion

A10's sealing motion seeks leave, pursuant to Local Rules 7-11, 79-5(c), and 79-5(d), to file under seal portions of A10's opposition to Brocade's motion to dismiss and portions of the Declaration of Henry Liang in Support of A10's Opposition ("Liang Declaration"). ECF No. 68. The Court has reviewed the proposed redactions to A10's opposition and the Liang Declaration and finds them sealable because the proposed redactions to both documents are narrowly tailored and

1 refer to and disclose the confidential, sensitive, and proprietary information contained in the PAA,
2 which, as discussed above, the Court finds sealable. Accordingly, the Court GRANTS A10's
3 sealing motion. A10 shall file its opposition and the Liang Declaration under seal by Lwp'g'6,
4 2012. A10 shall redact, as proposed, its opposition and the Liang declaration and publicly e-file
5 the redacted versions of these documents by Lwp'g'6, 2012.

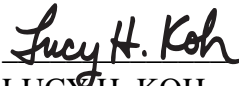
6 **C. Brocade's Second Sealing Motion**

7 Brocade's second sealing motion seeks leave, pursuant to Local Rules 7-11 and 79-5(b), to
8 file under seal portions of Brocade's Reply to A10's opposition. ECF No. 70. On February 23,
9 2012, A10 filed the Declaration of Mark Flagel in support of Brocade's second sealing motion
10 pursuant to Local Rule 79-5(d) ("Flagel Declaration II"). ECF No. 74.

11 The Court has reviewed the proposed redactions to Brocade's Reply to A10's opposition to
12 Brocade's motion to dismiss and finds the proposed redactions sealable because they refer to and
13 disclose the confidential information contained in the PAA, which, as discussed above, the Court
14 finds sealable. Accordingly, the Court GRANTS Brocade's second sealing motion. Brocade shall
15 file its reply under seal by Lwp'g'6, 2012. Brocade shall redact, as proposed, its reply and publicly
16 e-file its redacted reply by Lwp'g'6, 2012.

17 **IT IS SO ORDERED.**

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19 Dated: May 29, 2012

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21 LUCY H. KOH
22 United States District Judge
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